VOL. CXIV. LONDON: SATURDAY, MARCH 4, 1950. No. 9

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

Some of the vacancies in these columns relate to men and women coming within the provisions of the Control of Engagement Order, 1947, S.R. & O., No. 1471, or the vacancy is for employment excepted from the provisions of the Order.

HERTFORDSHIRE COUNTY COUNCIL

Clerk's Department

APPLICATIONS are invited for the undermentioned appointment :—

Conveyancing and General Law Clerk, Grade A.P.T. III.

Applicants must have had experience of conveyancing (including compulsory purchase) and the general work of a legal office. A knowledge of committee work will be an advantage.

Applications, stating age, qualifications, experience, and the names of three persons to whom reference may be made, must reach the Clerk of the County Council, County Hall, Hertford, Herts, not later than Saturday, March 18, 1950.

BOROUGH OF KING'S LYNN

Appointment of Second Assistant to Clerk to Justices

APPLICATIONS are invited for the appointment of a second assistant to the Clerk to the Borough Justices.

Applicants should have general magisterial experience ; be able to keep the accounts, court registers and other records, and take depositions. Shorthand and typewriting essential.

Salary in accordance with the Clerical Division of the National Scale (£395-£440).

The successful candidate will be required to pass a medical examination and to contribute to the King's Lynn Borough Council Superannuation Fund. Applications, stating full details, age and experience, with two testimonials, to the undersigned.

WILLIAM BARON,
Clerk to the Justices.

48, King Street,
King's Lynn.

BIRMINGHAM REGIONAL HOSPITAL BOARD

Appointment of Unadmitted Legal Assistant

APPLICATIONS are invited by the Board for the appointment of an unadmitted legal assistant on the scale £520 to £570 per annum. Applicants must have had experience in the general work of a law office, including County Court and High Court (District Registry), practice and conveyancing. The appointment is subject to the National Health Service (Superannuation) Regulations, 1947 to 1949, and to the passing of a medical examination and will be terminable by one month's notice on either side. Applications stating age and details of experience and qualifications, with the names of two referees, must be received by the Secretary, Birmingham Regional Hospital Board, 10, Augustus Road, Birmingham 15, not later than March 18, 1950. Canvassing will disqualify.

BOROUGH OF HARTLEPOOL

Town Clerk's Department—Conveyancing and Legal Clerk

APPLICATIONS are invited for the above appointment at a salary in accordance with A.P.T. Grade II (£420 x £15—£465). Applicants must have had considerable experience in conveyancing and related matters including compulsory acquisitions and must be capable of acting with nominal supervision. Local Government experience will be an advantage.

Housing accommodation will be available if required.

Applications, stating age, education and particulars of experience, accompanied by one recent testimonial and the names of two other persons to whom reference may be made as to the applicant's character and ability, must reach the undersigned not later than Monday, March 12, 1950.

L. O. WILLIAMS,
Town Clerk.

Borough Buildings,
Hartlepool.

COUNTY BOROUGH OF NEWPORT (MONMOUTHSHIRE)

Additional Full Time Male Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must be not less than 23 years nor more than 40 years of age.

The appointment will be subject to the Probation Rules, 1949. The salary will be in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than two recent testimonials, must reach me not later than first post on March 11, 1950. Envelopes should be endorsed "Probation Officer."

R. J. ROWLANDS,
Secretary to the Probation Committee.

Magistrates' Clerk's Office,
Civic Centre,
Newport, Mon.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**) ; Member of British Detectives Association and Federation of British Detectives. **Divorce**, Process serving, Observations, **Confidential investigations** and Status inquiries anywhere. Male and Female staff. **Over 150 Agents in various parts of the country.**—1, Mayo Road, Bradford. Tel. : Bradford **26823** day or night. Telegrams "Evidence" Bradford

SHIPLEY URBAN DISTRICT COUNCIL

Appointment of Clerk and Solicitor

APPLICATIONS are invited from qualified solicitors for the above-mentioned appointment at a salary of £1,250 per annum, rising, by annual increments of £50 to £1,400 per annum. The appointment will be subject to the terms and conditions (with one exception) in the Second Schedule to the Memorandum of the Joint Negotiating Committee for Town Clerks and District Council Clerks.

A Memorandum containing further details and particulars of the information to be included in applications can be obtained from the undersigned to whom applications should be forwarded so as to arrive by March 25, 1950.

HAROLD S. HASLAM,
Clerk and Solicitor.

Town Hall, Shipley.
February 22, 1950.

BOROUGH OF MALDEN AND COOMBE

Deputy Town Clerk

APPLICATIONS are invited from Solicitors for the appointment of Deputy Town Clerk at a salary in accordance with Grade IX of the A.P.T. Division, commencing at £800 per annum.

Applicants must have a sound knowledge and wide experience of local government, conveyancing, advocacy, and the law and procedure relating to town planning.

The successful candidate will be required to devote his whole time to the service of the Council and not engage in private practice.

The appointment will be terminable by one month's notice on either side and be subject to *(a)* satisfactory medical examination by the Council's Medical Officer ; *(b)* the National Conditions of Service and *(c)* the provisions of the Local Government Superannuation Act, 1937.

Applications, stating age, qualifications and experience, accompanied by copies of three recent testimonials, should reach the undersigned by 12 noon on Friday, March 17, 1950.

Canvassing will be a disqualification and applicants must disclose in their application whether to their knowledge they are related to any member or senior officer of the Council.

HAROLD E. BARRETT,
Town Clerk.

Municipal Offices,
New Malden,
Surey.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXIV. No. 9. LONDON: SATURDAY, MARCH 4, 1950 Price 1s. 8d.

Pages 108-119 Offices: LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper]

NOTES of the WEEK

Criticism of Magistrates

The Lord Chancellor's statement on the case of the two Newmarket magistrates appeared after we had gone to press, and could not, therefore, be included in last week's issue.

There will be general relief among justices and others interested that the Lord Chancellor has found the magistrates concerned guilty of nothing worse than a mistake as to their duty in the particular case, a mistake for which they are not in need of censure and which is no sign of incompetence to perform magisterial duties.

For those who have not seen the full statement we reproduce the purport of the letter, which Lord Jowitt addressed to the two Cambridgeshire justices, a copy of which he sent to Lord Templewood, chairman of the Magistrates Association.

In this letter the Lord Chancellor says that he feels that the two magistrates concerned made a mistake in refusing to commit the accused man for trial on a charge of manslaughter; on the other hand, he is quite satisfied that the mistake which was made was a genuine mistake, and is quite satisfied that the justices were not guilty of any dereliction of duty. Finally, the Lord Chancellor states that he does not consider that either magistrate is in any way unfitted to exercise the office of a justice of the peace.

In his general observations the Lord Chancellor says:—

"I am satisfied that these justices were doing the best they could to adjudicate in this case. The proceedings before them were conducted in an efficient and judicial manner.

"I think they made a mistake in not committing Wall for trial on the charge of manslaughter. On the other hand, I can understand how the mistake may well have arisen. The observations of the clerk, advising them that they must be satisfied beyond all reasonable doubt, and that the accused was entitled to the benefit of the doubt, may have misled them and induced them unconsciously to slide into a position in which they regarded themselves as deciding the case rather than as deciding the question whether there was a case to be tried. The former was not their function, though if it had been, the decision of the jury shows that there was much to support them. If only they had remembered throughout that their task was merely to see whether the case ought to go before a jury they would certainly have committed the accused for trial.

"On the other hand, I can well understand the surprise which the judge must have felt on reading the depositions to learn that the magistrates had refused to commit. Even trained lawyers make mistakes sometimes and I should be wrong to expect a higher standard from those who, in spite of their absence of training, voluntarily give their services and do the best they can.

"Though in this case the magistrates made a mistake, I am satisfied that they were not guilty of a dereliction of duty and are not unfit to be magistrates, and I see no ground whatever for removing either of them from the Bench. In view of the publicity which the matter has received, I think it is only fair to them that this should be stated."

Beyond Reasonable Doubt

The justices gave the case a seven-hour hearing and careful consideration. They seem to have failed to distinguish between the degree of proof required for conviction and the requisite evidence to justify committal for trial. In the former case, indeed, they must be satisfied beyond all reasonable doubt, and the defendant is entitled to the benefit of any doubts they may feel. In the latter, all they have to decide is the sufficiency of the evidence to raise a *prima facie* case to be tried by jury. If they think a judge would leave the case to the jury, there is a case for committal.

It is worthwhile to recall the words of s. 25 of the Indictable Offences Act, 1848, as to the duty of examining justices, "if in the opinion of such justice or justices such evidence is sufficient to put the accused party upon his trial for an indictable offence or if the evidence given raise a strong or probable presumption of the guilt of such accused party," then such justice or justices shall commit him for trial. The question is not whether the examining justices would convict, but whether they consider there is a case to be answered. It is true that by s. 12 (8) of the Criminal Justice Act, 1925, the justices must take into account any evidence for the defence, but even then they must not assume the functions of the jury and decide the matter on the basis of being satisfied beyond all reasonable doubt.

However, the Lord Chancellor's statement will reassure magistrates generally, and enable them to feel that an occasional mistake in law is no disgrace.

Probation in Croydon

The report of the probation committee for the county borough of Croydon for 1949 contains some useful information as to the cost of the probation service. It is estimated that the average cost for each probationer, taking the average of the numbers on probation at the beginning and at the end of the year, is £16 14*s.* 9*d.* This is worth noting. No one ought to recommend probation just because it involves comparatively small expenditure, but it is permissible to point out that here is a service which does not involve expenditure of large sums of money upon offenders so that if the system is working well it has everything to recommend it. We all know only too well how expensive is the maintenance of persons in prisons and other institutions today, and though it would be wrong to refuse to commit, in suitable cases, on the ground of expense, the question of the expense of various methods of treatment is worth some study.

It is natural to place on record cases in which treatment has been successful, and not so pleasant to recount the details of

failures. In this report there is a short account of eight cases that failed under supervision which makes instructive reading.

There is sometimes misapprehension about supervision, under the Money Payments (Justices Procedure) Act, 1935, of persons who have been fined. The following passage from the report puts the matter clearly :—

"The powers of probation officers are very limited in these cases, and it cannot be too strongly emphasized that fining with supervision is no substitute for probation. Frequently the bench imposing the fine fix the payments at so much per week, having in mind that it will take x weeks to complete the payment. If the offender wishes, the amount can be paid in one sum, and it must be accepted, with the result that the supervision that was intended cannot be exercised, thus defeating the purpose the bench had in mind when imposing the fine."

We have heard of a case in which a court having ordered that a fine should be paid by instalments, refused to allow the whole to be paid at once. This they did in order to preserve the right of supervision. However, we think very few courts would feel justified in refusing to allow a defendant to rid himself of his liability, and we cannot believe that s. 7 of the Summary Jurisdiction Act, 1879, justifies such a course.

Transfer of Minor Excise Licences

A minor reform, which should save some trouble in administration, is introduced by s. 15 of the Finance Act, 1949, and will take effect at the beginning of the financial year 1950-51, by virtue of the Minor Licence Duties (Transfer to Local Authorities) Order, 1950, S.I. 1950, No. 130, made by the Treasury on January 20. The licences involved are those required of hawkers under the Hawkers Act, 1888; of moneylenders under the Moneylenders Act, 1927; of pawnbrokers under the Pawnbrokers Act, 1872; and for the keepers of refreshment houses under the Refreshment Houses Act, 1860. Simplifications of the former system introduced by the section are that the licences for hawkers and pawnbrokers will now run for twelve months from the date of issue instead of for a fixed year, and that the differential rates of duty for refreshment houses by reference to rental value are abolished. Section 16 of the Refreshment Houses Act, 1860, provides specially for a register of licences under that Act, and the Treasury Order directs that, when requested by the clerk to the justices for their area or any part of it, the council shall give him a copy of or extract from the list or register. If the statutory requirements are complied with, the issue of a licence is not in general a matter of discretion, and the Minister of Health has suggested to the councils concerned that they consider whether to make arrangements for issue by their officers without awaiting prior consideration of each individual application by the council or a committee. The Treasury Order provides that, subject to necessary adaptations, the licences shall continue substantially in the present form unless the Minister of Health prescribes differently. As at present advised, the Minister does not propose to do so. The councils of counties and county boroughs have been supplied with specimens of the various licences and forms and a memorandum setting out the method of administration used hitherto by H.M. Commissioners of Customs and Excise. A suggestion we should like to make arising out of this is that councils should supply the list of refreshment houses not only to the officer who will be responsible for collecting the excise duty, but also to their sanitary inspectors engaged upon work for cleanliness of food supplies. They ought already to have information of all refreshment houses in their areas, but these Excise lists may provide a further check; the Excise duties in themselves are negligible, but, if the transfer of collection leads to slaughter of cockroaches here and there, the Refreshment Houses Act, 1860, will have served a more useful purpose, perhaps, than in the previous ninety years of its existence.

N.A.P.O.

The thirty-eighth Annual Conference of the National Association of Probation Officers will be held in the Town Hall, Cheltenham, from Friday, April 21 to Monday, April 24.

As usual, there is an attractive programme, with a suitable admixture of business and pleasure.

The proceedings open with a civic reception by the Mayor and Mayoress of Cheltenham, followed by dancing and entertainment. On Saturday, the formal welcome to the conference by the Mayor will be followed by the Annual General Meeting. In the afternoon there is to be an address by Sir Hartley Shawcross. In the evening there will be another opportunity for dancing. Sunday begins with church services. These are followed by an address by Mr. R. Duncan Fairn, of the Prison Commission, on "New Treatments under the Criminal Justice Act, 1948." The afternoon session is devoted to an address by Miss W. M. Goode, Head of the Probation Branch, Home Office, on "The Criminal Justice Act, 1948, after one year." After tea the Earl of Feversham will deliver his presidential address. In the evening members will have the opportunity of attending a municipal concert.

Tenants Improving Council Property

A problem which we do not remember to have had brought to our notice before cropped up recently at a meeting of the St. Faith's and Aylsham rural district council. It is perhaps not very often that the tenant of a council house, knowing as he must that he has no security of tenure, is willing to spend any substantial sum of money on improving it. In this case the house was evidently in an area where a piped water supply had only recently become available and it had no bathroom or water-closet. The tenant was prepared to make these improvements and construct a cesspool at his own expense, and also to enlarge the kitchen. The problem could not arise in quite the same form with those council houses (the very large majority) which already have bathrooms and the water carriage system, but it could arise in other matters: a tenant, for example, might be willing to throw out a bay window, or to instal a better lighting system than the council had thought necessary. The rural district council's housing committee agreed in principle to the tenant's proposals, on the distinct understanding that the fittings to be installed by him would become landlord's fixtures, and that he would not be entitled to compensation for them at the expiry of his tenancy. This, we imagine, is what would ordinarily have been done by a private landlord in similar circumstances. The council sent back the housing committee's recommendation to be reconsidered, upon the ground that, whatever the express agreement with the tenant, he would be likely when the time came to claim some sort of compensation, and that his action might become a precedent. If, it was said, other tenants were allowed to spend money on their houses the council would "lose control." We can appreciate the argument that a tenant ought not to be allowed to spend substantial money on the house he occupies, unless steps are taken to make sure that he understands the position: in the case at St. Faith's, the vice-chairman of the housing committee was apparently satisfied that the man had understood the position, and said he was proposing to do a good deal of the work with his own hands, which would reduce the cost. The other argument that the council would lose control by allowing the tenant to improve the council's property is one which we find it difficult to understand. Here again, we should have thought that a public

authority might be under a higher moral obligation than the private property owner, to make sure that the tenant understood his legal position, but that, given his understanding, it was all to the good that tenants should improve the council property and that some one tenant should create a precedent for doing so, which others would follow. This from several points of view. It will add to the value of public property; it adds to the tenant's own comfort; it is likely to lead to stability and to the regular payment of rent. It is, in short, a means of benefiting the ratepayers at large and at the same time producing some of the benefits claimed for the owner occupier's position as against that of a mere tenant. We often read that members of some local authority have resisted a proposal, not in itself objectionable, for fear of creating a precedent. We wonder why. Precedents can be good, as well as bad, and, if something turns out badly, a local authority is not bound to follow precedent.

"THE JUSTICES AND THEIR CLERK"

[CONTRIBUTED]

In the *Justice of the Peace and Local Government Review* of January 15, 1950, at p. 15 *ante*, in an article published under the above title, the following paragraph appears :—

" For the future, under the new Act, justices' clerks are to be appointed by the magistrates' courts committee of the county or county borough in whose area they serve, and (after allowing an interval for the benefit of existing clerks and their assistants) are to have the professional qualification of being either a barrister or a solicitor of at least five years' standing."

If the latter part of this statement goes unchallenged it may be that appointing authorities may lose sight of the fact that that is not quite the law as enacted in s. 20 of the Justices of the Peace Act, 1949. It might be as well, particularly for the benefit of those at present employed as assistants, that the intention of s. 20 (4) (*b*) of that Act should be more accurately stated, for those who read the Official Reports of the debates during the passage of this measure through the House of Commons may also have felt that an incorrect impression was being given.

The subsection, which like the rest of the Act will come into force on such day as His Majesty may by Order in Council appoint (s. 45), provides as follows :—

> " A person not having the qualification as barrister or solicitor which is required by subs. (1) of this section may be appointed a justices' clerk . . . (*b*) if before the time of appointment or January 1, 1960, whichever is the earlier, he has served for not less than ten years in one or more of the said capacities (*i.e.*, clerk to a stipendiary magistrate, clerk to a metropolitan stipendiary court, clerk at one of the justice rooms of the City of London, assistant to any such clerk as aforesaid, and assistant to a justices' clerk) and, in the opinion of the magistrates' courts committee and of the Secretary of State, there are special circumstances making the appointment a proper one."

This means that *until* January 1, 1960, any assistant may be appointed a justices' clerk provided (*a*) that at the date of appointment he has served for not less than ten years in one of the specified categories, and (*b*) the appointing committee and the Secretary of State agree that there are " special circumstances making the appointment a proper one." *After* January 1, 1960, any assistant may *still* be appointed a justices' clerk provided that by January 1, 1960, he had completed not less than ten years' service as such and that proviso (*b*) above is satisfied. In other words, any assistant clerk who is in magisterial service on January 1, 1950, will by January 1, 1960, have acquired the necessary qualification for appointment as a justices' clerk *and will retain it for life, and may be appointed* if the committee and the Secretary of State find there are " special circumstances." It is submitted that this is not what the article at p. 15 *ante*, quoted *supra*, tends to convey when it says " after allowing an interval for the benefit of . . . assistants," etc. There is no question of " an inierval " in the ordinary sense of that expression, for a boy of fifteen years of age who entered a justices' clerk's office on January 1, 1950, will, throughout his life, after January 1, 1960, hold the new statutory qualification for appointment as a justices' clerk.

From reading the debates in Parliament one wonders whether others have misunderstood the situation. For example, Mr. Anthony Marlowe, K.C., the then M.P. for Brighton, is reported to have said (*Official Report*, December 13, 1949, Vol. 470, c. 2538) : " . . . I agree that my argument would be considerably reduced in force if we accepted the principle that *every clerk has to be qualified, but as things stand at the moment that will not be the case until* 1960 *and afterwards* . . . " (The italics throughout are the writer's.) A few minutes later the Home Secretary (Mr. Chuter Ede, M.P.) said: " We take the view that it is desirable that, within a reasonable space of time, every justices' clerk should be qualified. I take that view as a lay magistrate very strongly " (*idem*. c. 2540), and later (*idem*. c. 2541), " It would be grossly unfair to wipe them (non-solicitor/barrister Justices' Clerks) out at the moment, and we have therefore said that there shall be a limited time during which this matter will arise ; *there shall be a date beyond which no fresh appointments of unqualified people shall be made*. By an Amendment we have put down *we propose to make that date January* 1, 1960, so as to give ample time for other people to be qualified." Is the Home Secretary correctly construing s. 20 (4) (*b*), or is he merely seeking to express his own intentions if he is then Home Secretary, and at the same time seeking to bind his successor, that under no circumstances will the Secretary of State find occasion to agree with a magistrates' courts committee that "special circumstances" exist which would justify the appointment of a non-solicitor or barrister nomination? Later, Mr. Ede makes a similar remark (*idem*. c. 2545): " It does enable us, although we postpone the date . . . to feel that there will come a time when the justices will have the advantage of being advised in court by a qualified clerk."

Assistants who had hoped that s. 20 (4) (*b*) of the Act would preserve their reasonable expectations of appointment to a justices' clerkship by virtue of their years of service and hours of study and reading, must now feel deeply perturbed if this section is to be ignored or even interpreted in such a way that they will never be able to argue its purport. The Attorney-General (Sir Hartley Shawcross, K.C.), on December 7, 1949, in the House of Commons, said (*Official Report*, December 7, 1949, vol. 470, c. 2001): " The unqualified clerk is inevitably, under this Bill, a dying class. *As each one goes, a qualified clerk will be appointed in his place* . . . " It seems that in spite of s. 20 (4) (*b*), the present assistant will never succeed in securing what Parliament has said is to be left within his reach ! E.R.H.

[We consider the statement we made to be quite accurate, and to need no amendment, but we readily publish the foregoing since our contributor feels that some enlargement of the subject is desirable.—*Ed. J.P. and L.G.R.*]

COMPULSORY DISCLOSURE

THE ROAD TRAFFIC ACT, 1930: SECTIONS 40 (3) AND 113 (3)

By C. W. L. JERVIS

The peripatetic nature of a motor vehicle and the mischief of the vanished driver clearly led to the enactment of s. 40 (3) and s. 113 (3) of the Road Traffic Act, 1930. Neither power appears, as yet, to have been used to any great extent by chief officers of police. *Stone* refers to no decided cases on either subsection, and it seems that *Pulton* v. *Leader* [1949] 2 All E.R. 747 is the first reported decision on s. 113 (3).

Both subsections are examples of compulsory disclosure and worthy of attention. As s. 113 (3) has been recently judicially construed, it may be convenient to look at it first. It provides: "Where the driver of a vehicle is alleged to be guilty of an offence under this Act (*a*) the owner of the vehicle shall give such information as he may be required by or on behalf of a chief officer of police to give as to the identity of the driver, and, if he fails to do so, shall be guilty of an offence, unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who the driver was; and (*b*) any other person shall, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver, and, if he fails to do so, he shall be guilty of an offence."

The first thing one observes is that the driver, *as such*, is not required to give any information whatsoever. Upon its ordinary construction, the subsection strikes at "the owner" and "any other person." When one sees that the opening words of the subsection clearly govern both limbs (*a*) and (*b*), it becomes clear that the words "any other person" embrace all the world except the driver and the owner, a construction fortified by the very use of the words "*any other* person." If the legislature intended to apply the subsection to all the world it need only have referred to "any person."

It is interesting to speculate upon the omission to refer to the driver. One obvious answer is that if the chief officer of police knows the driver no occasion arises for the application of the subsection. But suppose he is not sure, or cannot prove it? He then demands the information from his suspect under limb (*b*) and creates a delightful situation if the suspect is in fact the driver. As we have shown, the driver can escape conviction under limb (*b*) by proving he is the driver—one feels the onus is on him to prove he is not "any other person." The driver wins on the one hand, only, no doubt, to be prosecuted for the alleged offence on the other. The chief officer of police gets his information but loses his case for compulsory disclosure.

Then again, the driver may be also the owner. Here, one feels, he is firmly within the first limb. Is he obliged to incriminate himself? It is submitted that he is so obliged, the statute having overridden the common law rule of privilege. A nice position arises, and a likely one, if the driver is the owner's wife and he only became aware of the fact because she told him so after the crucial journey. Here we are in deeper water. So far as the Evidence Amendment Act, 1853, s. 3, is concerned the owner cannot be compelled to reveal this communication made to him by his wife during the marriage. It is true that, by taking the point, the owner "gives the show away," but that is not to say it gives the police sufficient proof to prosecute the wife for the alleged offence. The wife of any owner so loyal as to take this attitude will know what to do if "asked to make a statement!"

The fact that the owner is prosecuted under limb (*b*) is immaterial. This was the second point taken by the appellant owner in *Pulton* v. *Leader*, *supra*. In his judgment, Lord Goddard, C.J., said: "there is nothing in that point. It may well be that the police do not know who the owner of the car is. They, therefore, serve the notice under s. 113 (3) on the appellant as the owner or any other person." In parenthesis, it is submitted, with great respect, that as the question whether the driver is "any other person" was not in issue in that case, the Lord Chief Justice was using those words as they appear in limb (*b*).

Where the owner is known, it is suggested that the chief officer of police is well advised to proceed under limb (*a*). (It seems that "the owner" need not be the owner at the time of the alleged offence (s. 121).) Once the chief officer has established the ownership and the owner's recalcitrance, the onus of proof is wholly on the defendant. No time limit for the giving of the information is prescribed. In *Pulton's* case, the appellant was requested to "furnish at an early date" the necessary information. Presumably a reasonable time must be allowed, according to the circumstances, and it would be unwise to demand the information be given within a time stipulated in the notice of demand. Although a written demand facilitates proof, it is not required by the statute.

A person who is prosecuted under limb (*b*) does not have to discharge so heavy a burden as the owner. It is submitted that the onus of proof is not cast upon him. The police must presumably establish a *prima facie* case that it is in his power to give the required information, *e.g.*, by proving he was near the scene of the alleged offence. One is not too sure of this, however. If the informant gives untrue information, it is considered he commits an offence under the subsection. Suppose the police believe that of six persons, only one can tell them who was driving. The information is demanded from each of the six. It is suggested that the words ". . . information . . . which may lead to the identification of the driver" cast upon any person (except the driver of another's car) however remote from the alleged offence, the duty of saying at least "I don't know. I was in Africa at the time." This negative information may lead, by the process of elimination, to the identification of the one of the six who does know, and thus to the identification of the driver. The example can be permuted *ad infinitum*, like the week-end puzzle where only the white men tell the truth and all the black men lie.

Pulton v. *Leader*, *supra*, also establishes that s. 113 (3) operates as soon as the driver is alleged to be guilty of an offence under the Act and the police need not specify the alleged offence. Any such allegation, therefore, however groundless or even wholly imaginary, is sufficient. The allegation may be in the abstract; the chief officer of police is not required to make it. In theory, no one need have any reasonable cause to believe the allegation, but, of course, in practice it is most unlikely the chief officer of police will use the subsection if he considers the allegation is without foundation.

Until the decision in *Ellis* v. *Hinds* [1947] 1 All E.R. 337, it was generally considered that an inspection of the certificate of insurance was sufficient material upon which to judge whether the vehicle was being driven in contravention of s. 35. It will be remembered that that case decided that the personal liability of the driver need not be insured if his user of the vehicle at the material time is covered by an insurance which complies with Part II of the Act. A perusal of the case shows

that, in order to decide whether the driver's employers were entitled to indemnity under their policy, the precise terms of an exemption clause (in a form now commonly in use) in the *policy* had to be judicially examined. In any circumstances where the suspected driver was driving in the course of his employment with the owner the police will desire to examine the owner's *policy* of insurance. It seems they can only compel the owner to produce his policy by the use of s. 40 (3). The question may be academic because the onus of proving his innocence of a charge under s. 35 is upon the defendant. Any owner who declines to produce his policy on an informal demand has only himself to blame if he is subsequently and, perhaps, wrongly charged under s. 35. Nevertheless, the police do not like to prosecute a person who proves his innocence by producing facts which they could have discovered before the charge. The circumstances in *Ellis* v. *Hinds* are by no means uncommon, particularly in relation to the driving of farm tractors by young employees who have never troubled to take out a driving licence, and it is considered s. 40 (3) might be freely used in such cases. For what is considered to be an extreme instance of the application of the *Ellis* v. *Hinds* principle, *see Marsh* v. *Moores* [1949] 2 All E.R. 27.

As we have said, the police may fairly prosecute under s. 35 if they fail to get the information required under s. 40, the onus or proof being on the defendant. They cannot so effectively do so for the "alleged offence" in respect of which information is required by s. 113 (3). The "alleged offence" may carry a severe fine and disqualification. If the "alleged offence" has, in fact, been committed by the person from whom the information is required, he may consider it more advantageous to pay the maximum fine of £20, for a breach of s. 113 (3) than give the information and be prosecuted to conviction for the more serious offence, for without the information the prosecutor may have no *prima facie* case in respect of the "alleged offence." What then? It is submitted that once prosecuted to conviction under s. 113 (3) the offender cannot be served with a fresh demand *for the same information* and be convicted again under s. 113 (3). The offence is surely the same, *autrefois convict* is a good defence, and the powers of the police under the subsection are exhausted (*cf. R.* v. *Hurle-Hobbs* (1945) 109 J.P. 63). Perhaps, therefore, the chief officer of police should demand only limited specific information at the outset. If the information is refused and a conviction follows under s. 113 (3) he may then, possibly, avoid a plea of *autrefois convict* by serving a fresh demand for *different* but specific information, and so on until someone gets tired of the matter.

CONTROL OF BUILDING OPERATIONS

We have found it rather difficult, from election broadcasts and the published statements of the parties, to forecast what is likely to happen to the control of building after the election which will have taken place by the time this article is printed. Given the outlook of the Government in power in 1949, and the added difficulties caused by the devaluation of the pound, it was inevitable that the Control of Building Operations (No. 13) Order, 1949, which took effect from July 1, 1949, should be superseded and continued for a further period by the No. 14 Order which came into operation on February 1, 1950. This last mentioned order not merely continues the system of control of private building which has now been familiar for so long, but imposes more rigorous limits than those contained in the order of July. If the election produces a change of Government, there may be modifications, but we do not suppose that the system embodied in these orders will disappear until (at any rate) after a transitional period. This being so, and for the present accepting the inevitability of continued control, we think attention might be drawn to one point, which could well have been met in the previous Orders, No. 12, of October, 1948, and No. 13 of 1949. It is a point which tells particularly hardly upon small property owners, who find themselves constrained by increases in cost over which they have no control to spend more money than they at first contemplated, and not infrequently to outrun the total figure for which work has been licensed. To some extent the hardship was in practice mitigated, though not designedly, by the No. 13 Order of 1949, inasmuch as that enlarged the limits for doing work without licence, and also the figure which could be licensed by local authorities, but the hardship may be once again brought about by the latest restrictions, in the No. 14 Order. The sort of hardship which can occur is illustrated by a case, of which we have been furnished with a note, heard before a county bench. Our informant tells us that the Government were made aware of the case, but no change was introduced in the operation of the system. The defendants were Miss A, the building owner; B, a local builder; and C, her architect. Miss A gave an order for a house to be built for her own residence, to cost not more than £1,200; there was thus no element of what Mr. Harold Wilson calls "posh" buildings, or of the luxury building which Mr. Herbert Morrison, in his election broadcast, said was avidly awaiting removal of control. The house was a modified version of a type which C had erected for a neighbouring district council since 1945 for approximately £1,200 apiece; between the wars he had erected similar houses in the same district for some £600. He felt, therefore, on safe ground in applying, on his client's behalf under regulation 56A of the Defence (General) Regulations, 1939, for a licence to build a house for £1,200. Evidence was given by another local architect, and by a quantity surveyor, that this was a reasonable and proper estimate, upon the prices ruling when C obtained the licence, after consideration of the plans by the rural district council and the Ministry of Works. It was common ground in the subsequent proceedings that the work had been executed in all respects in accordance with the plans submitted with the application for the licence; there had been some variation from the accompanying description of materials—this was not at the instance of the building owner or architect, but simply because some of the materials specified were found to be unavailable. When the work had been completed, the cost was found to have come to some £350 more than the amount for which the licence was granted, and this without B's charge for profit, insurance, overheads, and office expenses. B did not receive any percentage increase, or other benefit, by reason of the excess cost, and there was also an increase of £112 10s. due to increased wages. In respect of the excess a prosecution was launched by the Director of Public Prosecutions, after the rural district council had considered the circumstances in their capacity of licensing authority, and decided not to prosecute.

The result was conviction of all three defendants. The magistrates held that there had been a technical offence on Miss A's part, which could be met by a penalty of £5; that C ought to have followed up an application which he made to the rural district council for a supplementary licence, when it was discovered that the cost was coming out higher than had been foreseen, and that he therefore must be fined £10, and that B, the builder, had been remiss in not discovering early enough, and

not informing C earlier than he did, how the costs were running up. In his case a fine of £20 was imposed. The penalties were stated to have been low by reason of extenuating circumstances in each case; evidently the magistrates were satisfied that there was no intentional breach of the law, and all three defendants, notably B, had from the first placed full information at the disposal of the Ministry of Works. Another fact, of which something was made (though not perhaps enough), was that the rural district council had sent no answer to C's application for a supplementary licence, because they had sent his letter on to the Regional Office of the Ministry of Works from which, in turn, nothing had been heard. The bench commented adversely on this silence, and some benches might have treated it as justifying dismissal of the charges, on the ground that C, who was responsible for procuring the necessary licences, had done his best to procure them. An extract was read to the court, from a pamphlet on the subject of supplementary licences issued from the Ministry of Works, which states that, if the application is sent by registered post, " work may be continued pending issue of a supplementary licence, unless and until the applicant hears to the contrary." Here the observations of the Court of Appeal in *Falmouth Boat Construction Ltd.* v. *Howell*, *The Times*, February 10, 1950, are very much in point.

What then, are the conclusions which emerge? First, para. (6) of reg. 56A treats architects and engineers on a footing different from that of other professional men. We are not here concerned with the merits of the policy of restricting private building, in the interest of a housing policy entrusted by the Government to local authorities. Nor do we dispute the propriety of working these restrictions through a limit of price; other methods of working would not be impossible, but price provides a convenient measure of the amount of work done, just as it does for the meat ration. We feel, however, that architects and engineers have a grievance, which their professional organizations might take up with the Government. If a property owner who is ill or abroad, or for any other reason is unable personally to attend to his affairs, instructs his solicitor to do so, the solicitor (not being mentioned in para. (6) of reg. 56A) incurs no personal liability if there is a breach of that regulation, even though he may have taken an active part in arranging the business, unless he actually supervises its execution. No doubt, the authors of the paragraph would say that architects and engineers were put in the specially unfavourable position which they occupy, because it is part of their regular professional duty to supervise building works, and that, if they were not made personally liable, the builder would be able to shelter behind instructions given by the architect or engineer. There may on this ground be some justification, for singling out members of these two professions for the invidious distinction of being mentioned in the regulation but, if so, this lends more force to a second, and as it seems to us even more formidable, reason for thinking that the regulation in its present form is wrong.

Granting that price is a convenient measure, to be used in determining whether building shall be allowed or not, it is nevertheless obvious that price is nothing but a measure. This is neatly shown in the case we are considering, inasmuch as a few years earlier the same architect had, in the same neighbourhood, carried out substantially the same work for half the price authorized in the present case. The object of the regulation is, in truth, not to save the building owner's money but to limit the amount of material, especially scarce material, and the amount of labour, to be used in private building. What the licence granted really meant was that A might pay for, and B under the supervision of C might use, a certain quantity of materials in a certain manner, engaging for the purpose the normal labour needed to achieve an approved result with those materials. The full details of what was proposed were before the licensing authorities; the substance of the matter was their granting a licence for those materials and that amount of labour to be used. It was (so to speak) no more than a shorthand method of describing what was licensed, to say that it was £1,200 worth of work, and in our submission the regulation ought to contain some proviso, or some saving clause, by which it would not be an offence to exceed the stipulated figure for licensed work when the amount of materials and labour (which were the real substance of the licence) had not been exceeded.

It is true that the licensing system allows of applications to exceed the stipulated figure, where changes in the cost of materials or labour make it impossible to complete the licensed work without exceeding the figure. This case, however, shows that the machinery for obtaining such a supplementary licence may work badly, or not work at all—thus producing obvious injustice.

Even had the rural district council and the Ministry of Works succeeded between them in answering C's letter, and had they answered it favourably (as upon the facts they surely must have done) this does not alter the point we are concerned to make, which is that in such circumstances no supplementary licence ought to have been needed, because B was doing merely the *quantum* of work which C had been licensed to do. In other words, their departure from a condition framed in terms of money was in no sense a departure from the substance of the licence which had been issued to them.

In most of the cases of " black market building," which find their way into the press, there is some element of culpability; in those which find their way into ministerial speeches there is some element of luxury, or diversion of materials and labour from the primary needs of housing. In the case before us there was neither of these factors. A was wholly innocent. C could not be accused of anything except an excess of optimism, in hoping to the last that the price would be kept down in the interest of his client, and of assuming (without warrant) that the licensing authorities, having been apprized of the increased cost, would let him know if they did not approve. Against B the worst that could be said, and was said by the bench in imposing upon him the heaviest of the three fines, was that he ought to have done more to bring it home earlier to C that the costs were running up. Readers, however, who are acquainted with the offices of country builders will not be much impressed by this. B gave evidence that he and his brother, partly with the object of keeping down the cost in A's interest, had from start to finish worked upon the job with their own hands—and those hands are unlikely to have been very supple with the pen. The book-keeping required for the purpose of ensuring compliance with the Defence Regulations, and other restrictions now in force, is a serious undertaking for this sort of firm, and things may have been let slide a little longer than would have happened in the office of a town firm equipped with secretarial and accounting staff. B did at any rate aim at observing the essentials of the licence, in that there were no extras, and no failure on his part was suggested, in his control over his workmen. He gave it in evidence, and this was stated also by one of the prosecution witnesses, that nowadays materials are commonly charged as at the price ruling when they are delivered, and the accounts may come in from one to three months later. Some of the specified materials and fittings proved to be unprocurable, and alternatives had to be resorted to. How is a builder, expecially a small builder in the country, to know at any given moment how much has been expended?

The case is so much in contrast with those of which members of the Government have complained in the House of Commons and elsewhere, that it is difficult to see why the Government,

when their attention was drawn to the working of reg. 56A in this case, refused alteration of it. We have dealt with the matter at some length, in the hope that professional opinion may be mobilized to impress upon whatever Government is in office when this article is printed that an amendment of reg. 56A is urgently called for to avert injustice.

ROADS ON RURAL HOUSING ESTATES

An awkward little point, upon which we have in the last ten years been constrained to change our minds, arises about the laying out by local authorities of public streets or roads on their housing estates. Section 79 (1) (*a*) of the Housing Act, 1936, which was a consolidating Act, reproduces a provision occurring earlier in s. 59 (1) of the Housing Act, 1925, empowering local authorities who have acquired or appropriated land for the purposes of the Act to lay out and construct public streets or roads upon it. There is in s. 81 (2) of the Act of 1936 a provision about the maintenance of streets so laid out and constructed, where the estate is outside the local authority's own boundaries; this provision comes from s. 62 of the Act of 1925, as amended by sch. 5 to the Housing Act, 1930, and imposes liability for maintenance upon the local authority in whose area the street or road is situated, unless that council or the Minister of Health be satisfied that it is not properly constructed. The common case in 1925 was where a local authority was both the highway authority and the housing authority; since both functions were exercisable by the same corporate body, it was natural that a street or road laid out for public use should be maintainable by that body as representative of the inhabitants at large, and it seemed not illogical to say, in what is now s. 81 (2) of the Act of 1936, that in the less common case the liability should, subject to safeguards, attach to area and not to ownership of the soil. It would have looked more peculiar, that what the section called a "public street or road" should become a highway repairable by the inhabitants at large automatically, as distinct from a street or road laid out and dedicated by a landowner not proceeding under the Housing Acts, had it not been that in the common case the two authorities were the same. Where they were the same, no difficulty arose from the use of the phrase "public street or road," which is not a term of art, any more than difficulty now arises on this score where (let us say) the council of a county borough lay out a housing estate within the borough boundaries. It may indeed be doubted whether, up to the stage in the development of the law where the Act of 1925 was passed, the adjective "public" had in this context any great significance. If it had, this could only have been to indicate that the road laid out by the housing authority was to be treated, without express dedication, as being dedicated to use as a highway. The phrase "public streets or roads" in this section goes back to the Housing, Town Planning, &c., Act, 1909. Section 6 of this Act added this power to those exercisable by a local authority in virtue of Part III of the "principal Act," namely the Housing of the Working Classes Act, 1890, and went on to say that the local authority might contribute to the cost of laying out or constructing "any streets or roads," by other persons on the land acquired or appropriated by the local authority for Part III purposes, on condition that those streets or roads be dedicated to the public. The clue to the meaning of "public" lies in this last mentioned part of the section: the draftsman had dedication rather than maintenance in mind. The words "public streets or roads" are repeated in s. 15 of the Housing, Town Planning, &c., Act, 1919, but without the alternative of contributing to the like streets or roads laid out by private persons (so that the original clue has disappeared), and from the Act of 1919 were copied into s. 59 (1) (*a*) of the Act of 1925. It might in the events which have since occurred have been better if Parliament had said in so many words that the local authority might lay out roads and that roads when laid out should be taken to be highways, or alternatively that the local authority should have power to dedicate to highway purposes land acquired for housing purposes, rather than to use the phrase public streets or roads, which can now be seen to be equivocal. However this may be, there was no particular difficulty up to 1929.

The Local Government Act, 1929, however, vested existing highways repairable by the inhabitants at large in rural districts in the county council as highway authority, and rural district councils ceased to be highway authorities.

The transfer must have included public streets or roads previously laid out and vested in a rural district council under s. 59 of the Housing Act, 1925, or previous corresponding legislation, but would not include public (that is, dedicated) roads previously laid out by a private person unless already, at the coming into operation of s. 30 of the Act of 1909, repairable by the rural district council. In regard to public streets or roads laid out by a rural district council after s. 30 of the Act of 1929 came into operation, the effect of separating the highway function from the housing function was, by a side wind, to bring into operation s. 23 of the Highway Act, 1835. That section was passed to prevent what could previously have happened, namely that a landowner dedicated a road as a highway (or what the Acts of 1909, 1919, and 1925 called a public road) and so transferred to the inhabitants at large the cost of keeping it up. In the circumstances existing in 1835, this would hardly have occurred on any large scale at any one place, but it had been found that the inhabitants at large had, over a long period, been saddled with liability for many highways which they would not willingly have accepted, and had it not been for s. 23 of the Act of 1835 it could have happened in the nineteenth century, when building development went ahead more extensively than ever before, that landowners developing estates, who laid out roads thereon primarily for estate purposes, could by dedicating them to public use as highways, which they could do expressly or impliedly, have thrown the cost of upkeep on the parish or county. To prevent this was the object of s. 23 of the Act of 1835, to which s. 150 of the Public Health Act, 1875, and the provisions of the Private Street Works Act, 1892, were complementary. These enactments, protecting highway authorities on the one hand, and enabling the burden to be assumed by the highway authority upon certain conditions on the other hand, did not interfere with the maintenance of "public streets or roads" dedicated under s. 59 (1) (*a*) of the Housing Act, 1925, at the time it was passed, but once housing authorities ceased in rural districts to be highway authorities, upon the coming into force of the Local Government Act, 1929, the housing authorities so ceasing came to stand in the same position under s. 23 of the Highway Act, 1835, as private developers. That is to say, further action, either under s. 23 of the Act of 1835 or under the Private Street Works Act, 1892, became necessary, for throwing upon the county the liability to keep up "public" streets or roads on a rural district council's housing estate. Whether in enacting the Act of 1929 Parliament intended this result is conjectural: at any rate, we have not found that the matter was then discussed. When housing law was again consolidated by the Housing Act, 1936, s. 59 (1) (*a*) of the Act of 1925 was reproduced unaltered. It will be remembered that

the Housing Act, 1936, unlike the Public Health Act, 1936, passed on the same day, which was consolidation with amendments, was pure consolidation, so that, by the combined operation of the Local Government Act, 1929, and the Housing Act, 1936, rural district councils as housing authorities carry the same burden as is carried by private developers, and by those local authorities who combine the status of housing authorities and highway authorities. We do not know whether the policy in this matter has been considered either by the Government or by the County Councils Association since the war; our feeling is that the burden could, without serious loss to the counties, be assumed by them. This would be one way to help rural housing forward—that is to say, by a short Bill applying in rural districts the same principle as already applies where a local authority lays out public streets or roads on a housing estate outside its own area, so that the streets or roads would become at once maintainable by the highway authority, subject to suitable safeguards regarding their original standard of laying out and construction.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent

The work of His Majesty's Government must go on.

Despite the near-stalemate resulting from the General Election, there is no difference of opinion on that between the political parties and there is therefore no likelihood of another General Election until the various financial and administrative measures necessary for the continuance of Government have been passed.

Informed opinion in the House of Commons, where M.P.'s were sworn in this week, was that the next General Election will take place in the autumn.

In addition to the general agreement that a Budget and the Estimates must be passed in the next few weeks, both Conservative and Labour leaders are opposed to a second General Election immediately. Their political machines and funds have been hard-worked and are run down, and they have their municipal elections to contest in May. There is also a widely held belief that a Second General Election now might result in another stalemate, though perhaps with a small overall Conservative majority.

It is unlikely, therefore, that the Opposition will endeavour to bring about the fall of the Government in the next month or so.

But in March the new electoral register comes into force, and by the summer there may be new political trends and issues. Also it has to be borne in mind that, if the Government survives until the end of July, Parliament would then be in recess until November and the Government would be safe from fear of defeat while the Steel Act comes into operation in October. An all-out effort to defeat the Government can therefore be expected in July, but even if Labour can maintain its slender majority throughout that month, it is anticipated that the Prime Minister would go to the country in the autumn in an endeavour to obtain a working majority.

Meanwhile, the King's Speech opening Parliament on Monday will outline the programme for the forthcoming Session. It is not expected to contain any highly controversial measures but to concentrate on administration rather than legislation. One of the bills expected to be included is that to reform the law of leasehold to which the Government is pledged.

REVIEWS

Law and the Modern Mind. By Jerome Frank. London: Stevens and Sons Limited. Price: 25s. net.

The author of this work is a judge of one of the courts in the United States. His preface states that for years, in his own thinking and that of others at the bar, he had encountered baffling characteristics which he here attempts to explain, in the hope of making the nature of the law less baffling both to lawyers and to laymen. The book appears from a bibliographical note to have been before the American public for some twenty years, but the present is the first English edition. Mr. Justice Felix Frankfurter, of the Supreme Court of the United States, said of an earlier edition that the book calls upon one to re-examine one's thinking, because it challenged "the conventional assumptions regarding the way we think we think about the law." Part I is entitled "The basic legal myth and some of its conclusions." Part II is "The basic myth and certain brilliant legal thinkers." The basic myth, we gather, is the assumption that law is capable of being made entirely stable and invariable, and indeed that it is on the whole already established and certain. Given the thesis that this notion is a myth, developed mainly in the legal profession, together with the thesis that lawyers fail to recognize the essential plastic and mutable character of law, the rest of the book follows naturally, from the learned author's wide reading and felicitous expression. Bernard Shaw, Rabelais, and Martin Luther, Rosco Pound, genetics, and Wendell Holmes, jostle each other in his pages which lead to the conclusion that Wendell Holmes was "the completely adult jurist," in contrast to the many brilliant legal figures who had gone before. Appendices range from fetishism through the jury, codification, the fictions, and unconscious mental processes. The whole is remarkably stimulating, and Messrs. Stevens are to be congratulated on making it available to English readers, in the same size and form as other important juristic writings such as Professor Friedmann's *Legal Theory*.

The Registration of Electors. By F. H. Smith. London: Hadden, Best & Co., Ltd. Price: 12s. 6d.

In our recent review of textbooks on electoral law, issued by Shaw & Sons and Charles Knight & Co., we commented with pleasure upon finding these two old rivals, in the field of local government publishing, again coming forward to offer the reader a choice of works upon one subject. We now have the third of the firms who last century made their name especially in this field, Messrs. Hadden, Best & Co., placing before the public the present work on one aspect of the same subject, namely the registration of electors, which is dealt with in the book already noticed by Messrs. Shaw, but not in that by Messrs. Knight. Readers who have bought the latter may wish to supplement it with this handbook, which is of smaller size but covers, comprehensively, the particular corner of the field of electoral law which the learned author has chosen. Beginning with a tabular history of the franchise from 1429 to the present day, which will be of special interest to the student of domestic politics, the book goes on in Chapter II to a brief outline of so much of the Representation of the People Act, 1949, as relates to the registration of electors, and then to the registration officer and his duties, with a fourth chapter on the official canvass which the Act makes it his duty to carry out. The Representation of the People Act, 1949, so far as relevant, is then set out with the appropriate statutory instruments and, finally, the Electoral Registers Act, 1949, which upset, before the year was out, the law as laid down by the major Act. It is perhaps only right to say that, of the two hundred pages of the book, 144 consist in this way of official publications (Acts or sections of Acts, forms, and circulars) which are elsewhere available, so that the learned author's own text comprises no more than forty pages, including the eight pages of tabulated history. There is a reasonably complete index of fifteen pages, so that the handbook will undoubtedly be helpful for quick reference while, so far as we can see, the thirty pages in which the expository matter are contained are reliable and usefully arranged.

NEW COMMISSIONS

DORSET COUNTY

Montague John Scott Williams, Woodland House, Blandford.

FLINT COUNTY

Mrs. Evelyn Victoria Summers, Denna Hall, Burton Point, Wirral, Cheshire.

GREAT YARMOUTH

John Smith Egerton, 68, North Denes Road, Great Yarmouth.
Walter Hansell, 44, Collingwood Road, Great Yarmouth.
Herbert Stewart Matthes, The Rowans, Bridge Road, Gorleston.
Frederick Ives Skoyles, Great Eastern Hotel, Nelson Road, Central Great Yarmouth.

HELSTON BOROUGH

Mrs. Edna Michael, Lismore, Helston.
Thomas Gard Willis, 1, Cross Street, Helston.

LEICESTER CITY

James Alexander Vazeille Boddy, Orchard House, Rothley Plain, Leicestershire.
Harold George Durston, Maplehurst, Ratcliffe Road, Leicester.
George Gallimore, 301, Scraptoft Lane, Leicester.
James Pickard, 729, Welford Road, Leicester.

MARGATE BOROUGH

George Searle Brown, 69, Northdown Park Road, Margate.
Miss Kathleen Eleanora Phillips, Gwynant, Shakespeare Road, Birchington.
Miss Ethel Rogers, 48, Upper Dane Road, Margate, Kent.

MISCELLANEOUS INFORMATION

THE BRITISH COUNCIL

The report of the British Council for the year ended March 31, 1949, shows the various activities of the council both in Great Britain and abroad. It is interesting to learn, for instance, of the interest taken in Italy in the social services in the United Kingdom. In particular, interest in the treatment of juvenile delinquency here was aroused in the responsible Italian Minister by a British Council film which was shown to him privately, after which some experimental work was undertaken in Italy. This was supplemented by the visit of a specialist from Italy to the United Kingdom, and more recently by a lecture tour by Mr. John Watson. As a result, legislation has been enacted in Italy to enable the adoption of preventive work which will be based upon practice in the United Kingdom. Further study has since been undertaken by a group of specialists attending a council course in the United Kingdom, and it is hoped that the close association in this social and humanitarian work will be of permanent value to Italy.

A very important part of the council's work in the United Kingdom is in connexion with the welfare of overseas students. Many of the scholars brought to this country in the past hold today positions of great importance, so if overseas students are treated with discourtesy or even with aloofness or indifference, it is emphasized that the value to this country of their stay here may be lost. Expenditure on students' welfare work is lessened by help given by local residents, some as individuals and many as members of voluntary organizations, who are interested in fostering good relations in international affairs, and are generously willing to give time and hospitality to these students who are away from their homes.

The council attach much importance to giving assistance to other visitors from overseas, whose visits are sufficiently important to justify the council's bearing the cost and also those whose visits are of similar importance but involve no cost to the council. The work involves meeting visitors on their arrival, the preparation of programmes for them during their stay, arranging with organizations or individuals for their reception and instruction in their particular subjects, and the care of their transport and accommodation inside the United Kingdom. There is close co-operation in this matter with the headquarters of government departments, and the area officers of the council co-operate with government officials, local authorities, institutions, industrial establishments and societies in their areas. The council has thus made close contact throughout the country with bodies and individuals willing to help overseas visitors. The contacts and the experience thus accumulated have led government departments and international organizations to use the council as their agent in looking after many visitors for whom they are financially responsible. Study programmes were arranged for 869 visitors as compared with 905 in the previous year, but in 1947-48 two-thirds were guests of the council, whereas in 1948-49 the proportion in receipt of some degree of financial help dropped to thirty-nine *per cent.* These figures illustrate an important trend in this section of the council, which is the increasing tendency to carry out agency work, on behalf of British or foreign government departments and the various specialist agencies of the United Nations. Financial assistance was given during the year to a limited number of delegates to enable them to attend international conferences in this country where currency and other restrictions would otherwise have prevented them from coming. Among the conferences which benefited from this policy were the British Association for the Advancement of Science, the International Congress of Mental Health and the Ninth International Congress on Industrial Medicine.

LOCAL GOVERNMENT LEGAL SOCIETY

EAST MIDLANDS BRANCH

A meeting of the East Midlands branch of the Local Government Legal Society was held at the Town Hall, Leicester, on Saturday, January 28, and was addressed by one of its members, Mr. R. N. Hutchins, LL.B., I.A.M.T.P.I., assistant solicitor, Derbyshire County Council, on the Legal and Administrative Aspects of the General Election. Those attending the meeting were supplied with copies of Mr. Hutchins' Vade Mecum for Election Agents and Returning Officers which was published in this journal at p. 31 *ante*, and an interesting discussion took place on a number of points where the new legislation had left room for doubts on the legal position. Mr. Hutchins also gave a brief outline of the History of the Franchise illustrated by a film strip.

Mr. A. R. Davis, assistant solicitor, Nottinghamshire County Council, opened a discussion on the question of election expenses, which included the current controversy about expenditure in support of a candidate incurred by persons without his authority. The next meeting of the branch is to be held at Nottingham on Saturday, April 29, 1950.

ASSOCIATION OF HEALTH AND PLEASURE RESORTS

The annual general meeting of the Association was held recently in London. The chairman, Mr. J. K. J. Pindar, of Scarborough, said in the course of his remarks that it was gratifying to be able to report that, upon the question of the financial contributions made by members of the Association to the Local Authorities Committee of the Travel Association, agreement had now been reached on the basis of the equivalent of 1/32nd of a penny rate for general publicity, and 1/8th of a penny rate for the additional publicity specified in the Travel Association's memorandum. The Association, said Mr. Pindar, still adhered to the view that responsibility for the advertising of Great Britain abroad was the responsibility of the Government.

The chairman also referred to the pollution of beaches by oil, which is a source of annoyance and damage at coastal resorts. The town clerk of Morecambe and Heysham, Mr. Roger Rose, had given the executive committee of the Association the benefit of information on the subject gained at a meeting held in his town. The meeting was between representatives of all the north-western resorts and of the various Ministries and other authorities concerned, and at the meeting it was reported that their standing instructions to coastguards required them to report any oil pollution which occurred, with a view to the Ministry of Transport taking such action as might be possible—a point which other local authorities of resorts were advised to bear in mind.

LANCASTER WATER RENTAL CHARGES

The Lancaster City Council, from April 1 next, are to collect water rental charges with the general rates, pursuant to the provisions of the Lancaster Corporation Act, 1930. They have also decided that compounding agreements entered into under the provisions of the Lancaster Board of Health Act, 1864, shall be terminated, and that the granting of a five *per cent.* discount for prompt payment of water charges shall be discontinued in respect of accounts rendered after that date.

PERSONALIA

APPOINTMENTS

Mr. Hugh J. Owen, clerk of the peace and of the county council of Merionethshire and clerk to the lieutenancy, has been appointed deputy lieutenant for the county of Merioneth.

Mr. P. K. Watkins, assistant solicitor to Southport, has been appointed assistant prosecuting solicitor to the city of Bradford. He takes the place of Mr. A. B. Fleming who has entered private practice.

Mr. George Leslie Whomsley, a probation officer for the Oxfordshire combined area, has been appointed senior probation officer for the Leicestershire and Rutland combined area. Mr. Whomsley, who is forty-five years of age, has been in the probation service for thirteen years. He represents the Oxford city probation committee on the Oxford city youth committee and is a member of the Oxford city committee of the Marriage Guidance Council. In 1945 and 1946 he was chairman of the Berkshire, Buckinghamshire and Oxfordshire branch of the National Association of Probation Officers.

OBITUARY

Mr. John Catterall Jolly, K.C., chairman of the Lancashire quarter sessions and recorder of Preston, died suddenly recently at Preston. Mr. Jolly, a native of Preston, was born in 1887 and was called to the Bar by the Inner Temple in 1911. In 1935 he became deputy-chairman of the Preston, Salford Hundred and West Derby Sessions, and in 1938 became chairman. Also in this year he was appointed recorder of Preston. In 1939 he took silk, and in 1946 became a Bencher of the Inner Temple.

Mr. P. W. Redhouse, probation officer for the Buckinghamshire combined probation area, died recently after a short illness. He was forty-three. Mr. Redhouse had served as a full-time probation officer in various parts of Buckinghamshire for over eleven years.

Mr. William Thomas Sears died recently at his home at Northampton at the age of seventy-three. In 1933 he was high sheriff of Northamptonshire. He was also a county magistrate and for several years a member of the Northamptonshire county council.

Mr. Stanley Wilson, formerly deputy town clerk of Warrington, town clerk of Leigh (Lancs.) and, until his retirement in 1930, town clerk of Tynemouth, died recently at his home in Tenterden, Kent. He was eighty-five years of age. Mr. Wilson was mayor of Tenterden from 1934-1936.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 17.

A CONTRAVENTION OF THE MOTOR FUEL (CONTROL) ORDER, 1948

A taxicab driver appeared on December 1, 1949, at Bradford City Court before Dr. F. J. O. Coddington, the stipendiary magistrate, charged with being in possession of kerosene in admixture with motor spirit contrary to art. 4 (1) of the Motor Fuel (Control) Order, 1948.

The defendant was further charged with unlawfully using kerosene in admixture with motor spirit for supplying motive power to a motor vehicle, contrary to art. 5 (5) of the Order.

For the prosecution, evidence was given that the tank of the defendant's taxicab was sampled, and was found to contain eighty *per cent.* petrol and twenty *per cent.* kerosene (paraffin).

When asked for an explanation, the defendant replied: "I haven't the faintest idea how it came to be so. It must have come from one of three (named) garages or some other garage when I filled up in the usual way."

The defendant took two points, (1) that the sample taken was not properly sealed, and (2) that he did not know that the kerosene was in his tank, that he had not put it there and as he had been informed of the analysis only some ten days after the sample was taken, he had had no opportunity of remembering all the garages where he had taken petrol, or of usefully making inquiries.

The prosecution called witnesses from the three named garages, who all denied having put paraffin in their petrol storage tanks.

The learned stipendiary magistrate held (1) that the sample was properly sealed in fact, and further that the above Order contains no directions as to how a sample shall be taken and sealed, (2) having regard to the wording of art. 4 (1) "except under the authority of a licence no person shall be in possession of any kerosene in admixture with motor spirit" and 5 (5) "except under the authority of a licence no person shall use kerosene . . . whether or not in admixture, for supplying motive power to any motor vehicle (exceptions excepted)" and having regard to the impossibility of proof of knowledge in the majority of cases, it was not necessary for the prosecution to give positive evidence of the introduction of the kerosene nor of the knowledge of the defendant. Having regard to the probabilities, he held that in this case the mere denial of knowledge by the defendant was not a sufficient defence and found the defendant guilty of both charges and imposed fines of £4 upon each charge and ordered payment of £1 costs. There was no appeal.

COMMENT

It is not surprising that there was no appeal in this case, for it is to be noted in connexion with the defendant's contention that the sample was not properly sealed that art. 16 of the order which makes provision for the taking of samples merely provides in subs. 2 that any person and the servants and agents of any person, in possession of any motor fuel shall, on demand, give samples thereof to any inspector appointed in pursuance of para. (2) of reg. 55AA of the Defence (General) Regulations, 1939, for the purpose of enabling that inspector to ascertain whether or not the order has been or is being complied with. It is submitted that it follows that each case must be decided upon its merits and that, provided the court is satisfied that the sample was taken in such a way as to preclude injustice to the defendant, evidence may properly be given as to the analysis of the sample.

(The writer is indebted to Dr. Coddington for information in regard to this case.) R.L.H.

PENALTIES

Dudley—February, 1950—obtaining £6 by falsely pretending that eight pairs of cheap stockings were nylons (two defendants)—each to serve two months' imprisonment. Actual value of stockings was £1 3s. 5*d*. The chairman stated that but for defendants having repaid the money, the court would have taken a more serious course.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption of Children—*Child the subject of High Court order as to custody—Jurisdiction of justices.*

The question whether justices should entertain applications for adoption orders where the High Court has ordered infants not to be taken out of jurisdiction was the subject of comment at 113 J.P.N. 367. I submit that the expression "be not removed out of the jurisdiction of the court" may be interpreted as a prohibition possessing geographical significance rather than a restriction of the powers of other courts. If because of a custody order embodied in a decree nisi justices decline to make an adoption order under rule 11, would a subsequent petition to the Chancery Division have to wait upon the sanction of the Admiralty, Divorce and Probate Division?

In support I quote an extract from a letter which was submitted to the judge of a county court recently who, as a result, made an adoption order despite the fact that the infant was the subject of a custody order of the divorce court.

"Divorce Registry,"
"Somerset House, W.C.2."

"... I am directed by the senior registrar to confirm that it is the view of the President that, if the requirements of the Adoption Act have been complied with, the justices would have a perfect right to make an adoption order, notwithstanding a custody order made by the divorce court. In such a case no application of any kind to this court is required." S. WELFARE.

Answer.

We agree that the order of the High Court forbids the child's removal to any place which is not within the jurisdiction of that court, but we feel that where the order contains such a prohibition the High Court remains seized of the case, and that is the reason why we think justices should not act unless they receive an intimation from the High Court that they may do so.

If there is simply a custody order, without such special prohibition, and both parents consent to the adoption, we think justices may properly act, and we are glad to find confirmation in the letter quoted by our correspondent.

If application be made to the Chancery Division we should not consider it necessary to make any application to the Divorce Division.

2.—Children—*Capacity to commit crime—Evidence in rebuttal of presumption against.*

I have had some conversation with brother clerks as to the practice adopted in other courts in dealing with cases against children between the ages of eight and fourteen years. From the information I have obtained it appears that the practice varies very widely and I would refer you to an article in the *Journal of Criminal Law* for January, 1949, p. 37, and to a letter appearing in the *Law Journal* for September 30, 1949, p. 539. From the information which I have obtained it appears that very few courts demand evidence from the prosecution rebutting the presumption of *doli incapax*. I am particularly concerned as to whether one is justified in accepting a plea of guilty without any evidence rebutting the presumption particularly if the child is not much older than eight years. I am also concerned as to what would be evidence of a mischievous disposition or discretion as mentioned in *Rex* v. *Gorrie* (1918) 83 J.P. 136. I wonder how far the following are proper evidence of mischievous discretion and how far they can be properly admitted, (*a*) evidence of a prior warning by a police officer to the child in connexion with a prior alleged offence, (*b*) evidence of an admission by a parent of prior trouble with the child, and (*c*) assuming that it is thought proper to take a plea of guilty, evidence of other cases which the child wishes to have taken into consideration.

SAL.

Answer.

It is usual in most courts of summary jurisdiction, we believe, to follow the procedure laid down in s. 14 of the Summary Jurisdiction Act, 1848, which makes no exceptions in cases of a child, and to take his plea to the charge. The Summary Jurisdiction (Children and Young Persons) Rule, 1933, provide that the charge shall be explained in simple language and he shall then be asked if he admits the charge. We think, therefore, the practice of taking a plea from a child is proper, and there have been one or two unreported cases within the last few years in which, apparently, a plea has been taken from a child at assizes.

If the child pleads guilty, we think it is none the less the duty of the justices to have the presumption in mind when hearing the statement of the facts and in considering anything the child may say to them. If they feel doubts as to the capacity of the child to form a criminal intention they should not act upon his plea but should try the case as if there had been a plea of not guilty. In many cases, however, the facts, coupled with the statement and attitude of the child in court, will satisfy them that the presumption has been rebutted.

If the court is satisfied that the child committed the act charged, and the only question is that of his guilty intention, we think evidence of a prior warning is material. As to an admission by a parent, we think the court should have the evidence from the parent, and not by way of a hearsay statement given by someone else. If it be thought right to accept a plea of guilty, we see no reason why the child should not be allowed to have other cases of a similar nature taken into consideration, provided the court is satisfied that he really understands those charges and admits them.

3.—Guardianship of Infants—*Maintenance order—Parents resume residence together—Effect on order.*

Mr. and Mrs. A were married in 1943 and parted in 1946 without any order of the court. In February of that year Mrs. A obtained an order under the Guardianship of Infants Acts by which she was granted the custody of the two children of the marriage and £1 per week for their maintenance.

In August, 1949, Mr. and Mrs. A came together, but parted two months later. Can the original order under the Guardianship of Infants Act be enforced now or should Mrs. A seek a new order? She is living now in a different petty sessional division from that in which she obtained the original order. SIG.

Answer.

Section 3 of the Act of 1925 makes it possible for a mother to obtain a custody and maintenance order while she is residing with her husband, and she has three months in which to arrange to live separately, after which time, if she is still residing with him, her order ceases to be of effect. While she does reside with her husband, she cannot enforce her order. The question of what happens if she resumes cohabitation or residence with him after having left is not specifically dealt with in the section and we think that the order remains until it is set aside by the court, though it is not enforceable in respect of the period of joint residence. It is always open to either party to apply to have the order varied, revoked or revived, as circumstances alter, under the provisions of s. 30 (3) of the Criminal Justice Administration Act, 1914. *See* also s. 3 (4) of the Guardianship of Infants Act, 1925.

We think the existing order can still be enforced in the present circumstances.

4.—Probation of offenders—*Order under Act of 1907—Amendment under sch. 8, para. 6—Criminal Justice Act, 1948—Whether probationer becomes convicted.*

I should be glad if you could answer a query regarding probation orders made before August 1, 1949, attracting the provisions of the Criminal Justice Act, 1948.

It is understood that substituting the name of the petty sessional division for that of the probation officer in an order made under the 1907 Act attracts all the provisions of the 1948 Act. Does it also mean that the probationer is presumed to have been convicted before being placed on probation instead of, as in the old Act, being placed on probation "without proceeding to conviction"? If this is so, it seems unfair that a person who voluntarily agreed to being placed on probation on the understanding that the court do not proceed to conviction should now, without his consent, be presumed to be convicted.

This query will, of course, only apply to courts of summary jurisdiction.

I should be glad if you would elucidate the matter. SPRO.

Answer.

The practical effect, even if the probationer has to be regarded as convicted, amounts to little or nothing, because of the provisions contained in s. 12 of the Criminal Justice Act, 1948. If the probation is completed satisfactorily the conviction will be thereafter disregarded. If he has to be sentenced for his original offence he is in the same position as he would have been under the old Act, for he would then have been convicted and sentenced.

On the whole, however, we incline to the view that the probationer

can still claim he has not been convicted. A condition of his recognizance is to appear, if called upon, for conviction and sentence. That condition is now to be treated as if it were a requirement of the order; we realize that it could not be a requirement in the case of a new order under the Act of 1948, but as it is more favourable to the defendant (at least in the opinion of some people) that he should be considered as not yet convicted, we think this view of the position can be justified. If the point is not free from doubt, it can at least be said that the plain intention is simply to make it possible to apply the new organization and machinery, *e.g.*, the supervising court and the issue of process, to existing orders, not to effect the status of the probationer.

5.—Road Traffic Acts—*Speed—Evidence of speedometer reading from a following car—Is more than one witness necessary?*

Reference is made to the cases cited in note "U" on p. 2080 of *Stone*, 1949, and to your answer to P.P. 10 at 112 J.P.N. 268. A single witness gives evidence of following a car in a built up area, of observation of a speedometer and of the accuracy of the instrument. The prosecution submit that this is sufficient in that the evidence of speed is not a matter of opinion but evidence of a fact.

In *Planey* v. *Marks* (1916) 70 J.P. 216 the speed was checked by a stop-watch in the operation of which no question of opinion could intrude. A speedometer reading from a following car can only show the speed of the car in front if the distance between the two cars remains constant, and as this distance cannot be *proved* constant it remains a matter of opinion. If the police car, travelling at 30 m.p.h. or more, is *overtaken* this point would not seem to arise; nor would it if the police car draws behind the offending car, reduces its speed to 30 m.p.h. or more, and sees the offending car draw away—but if instead it follows and purports to check the speed is not the evidence insufficient, even if the speed is so great as not to be accounted for by small differences in constant distance?

J.I.P.

Answer.

The evidence in such cases is, we understand, that the police car speedometer showed certain readings over a certain distance and that over that distance that car followed the offending car at an even distance. Evidence is also given that the police car speedometer was recording accurately the speed at the time in question. In our view this is all evidence as to facts, and no question of opinion enters into it. The court is required to be satisfied beyond reasonable doubt that the case is proved, and they may or may not be satisfied that the evidence proves that the police car followed the other one at an even distance or that the speedometer recording was accurate and so on, but we have no doubt that the provisions of s. 10 (3) of the 1930 Act, as amended by the 1934 Act, are not applicable to such a case.

6.—Sunday entertainment—*Swimming baths and games—Admission of spectators—Test of legality.*

Bathers are admitted to the corporation's swimming baths on Sundays on payment of x pence. Non-bathers are admitted on payment of y pence. Swimming and diving are taken at the will and pleasure of the bathers, and the only amenity afforded to the non-bathers is that of witnessing the swimming and diving, if any. I shall be glad to have your opinion as to whether:—

(*a*) On the above facts, the swimming baths are being opened or used for public entertainment or amusement, contrary to the Sunday Observance Act, 1780.

(*b*) Your answer would be the same, if the swimming pool is covered over and used for badminton under similar circumstances.

(*c*) Your answer would be the same if two local teams play a badminton match on a Sunday and non-players are admitted on payment during that time.

AQUA.

Answer.

(*a*) and (*b*) We doubt it, though examination of the numerous cases noted under the section in *Stone* shows how widely the section can be construed.

(*c*) We should say this is the wrong side of the line. The line is most difficult to draw, but any sort of organized activity, by which spectators can be entertained or amused, seems open to attack.

7.—Town and Country Planning Act, 1947: s. 17—*Town and Country Planning (Use Classes) Order, 1948—Bank manager's flat—Conversion to offices.*

A bank owns premises, on the ground floor of which there are bank offices, and on the first floor the rooms have been vacant for some ten years, but up to the time that they became vacant they were used as living accommodation by the manager of the bank. The bank now proposes to let the first floor rooms for use as offices and has sought a determination under s. 17 of the Act as to whether or not what is now proposed, *i.e.*, the letting of the first floor rooms as offices, is development within the meaning of the Act. The local planning authority has, therefore, to determine, *inter alia*, whether the last use of the first floor rooms, as living accommodation, can properly be termed as an ancillary use to the main use, *i.e.*, as a bank. Particular reference is made to art. 3 of the Use Classes Order, and to the Ministry of Town and Country Planning's explanatory memorandum on the Use Classes Orders, particularly para. 9, which states as follows:—

"Ancillary uses are, for the purposes of both orders, regarded as included within main uses. Thus, in a building the 'existing use' of which is, say, a general industrial building or a shop, it is assumed, unless conditions to the contrary have been imposed (*see* para. 11), that any part of that building can (without application for planning permission, or liability for development charge) be used (for example) as an office or as a staff recreation room or as storage accommodation. Article 3 (3) of the orders is directed to this point."

We can well understand that, if the first floor rooms had been used in connexion with the bank's business, apart from living accommodation for the manager, it might be termed as an ancillary use, but we are extremely doubtful whether, on the facts, the last use can be termed as an ancillary use or, in the words of art. 3 (3) of the Use Classes Order, "a use which is ordinarily incidental to" the main use.

A.M.D.

Answer.

The problem illustrates the tangle into which administration falls when the rights and duties of the public hang on these fine-spun distinctions. It has been usual for bank managers to be not only permitted but required to live in the "bank house," where they were provided with special facilities (and sometimes dogs) for the purpose of watching over the premises. In our opinion the use as a manager's residence was incidental to the bank, and, seeing that by definition a bank is an office, that the old and new uses are within class II in the schedule to the Use Classes Order.

Printed by R. J. ACFORD, Ltd., Terminus Road, Chichester, Sussex, and Published by the Proprietors, JUSTICE OF THE PEACE, Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. SATURDAY, March 4, 1950. Price 1s. 8d., post free 1s. 9d.